6/16/2014 3:11:29 PM
Reviewed By: Armando Cantu
Hidalgo County District Clerks
Electronically Filed

Electronically Filed
6/11/2014 1:53:04 PM
Hidalgo County District Clerks
Reviewed By: Claudia Lemus

MDL NOS. 13-0123 and 13-0130

IN RE MARCH 29, 2012 AND APRIL 20, 2012 HAIL STORM LITIGATION	§ § § § § § §	IN THE DISTRICT COURT HIDALGO COUNTY, TEXAS 206TH JUDICIAL DISTRICT

SECOND AMENDED MDL CASE MANAGEMENT ORDER NO. 1

I.
SCOPE OF ORDER

This Case Management Order ("CMO") applies to all hail storm cases stemming from the March 29, 2012 or April 20, 2012 hail storms that occurred in Hidalgo County, Texas, and any tag-along cases transferred to this Court pursuant to Rule 13 of the Rules of Judicial Administration.

II.
NOTICE

Immediately upon the filing of a Notice of Transfer in any related case, the party filing the Notice of Transfer shall also provide notice to all other parties and/or their counsel of this Order. All filings related to this coordinated pretrial proceeding and the individual cases herein, shall be done electronically through the Hidalgo County District Clerk's efile system. To the extent that any orders entered in this action conflict with the Local Rules of Hidalgo County District Courts, the Local Rules are hereby suspended.

III.
ABATEMENT

Immediately upon the filing of the Notice of Transfer, that case will be abated until 30 days after the filing of the Mediator's Statement declaring an unsuccessful mediation (*see* Section VI of this Order and Exhibit D attached hereto) , at which time the abatement will end,

Electronically Filed
6/16/2014 3:11:29 PM
Hidalgo County District Clerks
Reviewed By: Armando Cantu

Electronically Filed
6/11/2014 1:53:04 PM
Hidalgo County District Clerks
Reviewed By: Claudia Lemus

and the parties can proceed with Discovery in accordance with Section VII, below. The abatement period will apply to all Court ordered deadlines or Rule 190 Discovery deadlines. The abatement period will not apply to any statutory deadline, interest or penalties that may apply under any statutory code or law. .

IV.
INITIAL DISCLOSURES

Within 60 days of (1) the filing of the Notice of Transfer, (2) the entry date of CMO No. 1 (July 22, 2013), or (3) the date the defendant insurance company's Original Answer is due, whichever is later. the parties will use their best efforts to exchange information and documentation pertaining to the residence, to the extent same exists, including the following: Expert Reports, Engineering Reports, Estimates of Damage or repairs, Contents Lists for contents damage claim, Photographs, Repair Receipts or Invoices, the non-privileged portions of the Insurance Company and Independent Adjusting Company's claims file (including all claim diary notes, activity logs, loss notes and electronic communications and correspondence, any recorded statements and Examinations Under Oath taken regarding the insurance claim), payment ledger, payment log and/or proof of payment from the Insurance Company, a copy of the insurance policy in effect at the time of the respective Hail claim(s), and the non-privileged portions of the underwriting file. If the Insurance Company is not in possession of the Independent Adjusting Company's/Adjuster's claims file, and the Independent Adjusting Company/Adjuster is not named as a party in the lawsuit and represented by separate counsel, then the Insurance Company shall seek the Independent Adjusting Company's claim file and use its best efforts to exchange this information within the 60 day time period. The Insurance Company is also ordered to notify the Independent Adjusting Company that all emails, activity notes and loss diary notes pertaining to the hail claim in litigation shall be preserved and not

Electronically Filed
6/16/2014 3:11:29 PM
Hidalgo County District Clerks
Reviewed By: Armando Cantu

Electronically Filed
6/11/2014 1:53:04 PM
Hidalgo County District Clerks
Reviewed By: Claudia Lemus

destroyed. Lastly, a privilege log will also be produced in accordance with the Texas Rules of Civil Procedure for any redactions or privileges being asserted on any documents in the claims file or claim correspondence.

Any Expert Reports, Engineering Reports, Contractor Estimates or any other estimates of damages or repairs obtained by directive of Counsel for settlement, demand, or mediation purposes and exchanged prior to mediation shall be for "Mediation Purposes Only" and shall be considered confidential, except that any estimates and/or reports that are part of the claims file, which were obtained or prepared during the claims handling, shall not be considered confidential under this paragraph. Otherwise, such reports and estimates exchanged for mediation purposes shall only be used at trial if Plaintiff or Defendant designates the consultant as a retained testifying expert and does not properly de-designate prior to trial. If a consultant, whose report is produced at mediation, produces a subsequent report for use at trial, the mediation report shall remain confidential unless agreed to otherwise. The reports and estimates are only confidential for the lawsuit in which they are being used. Expert reports designated for mediation purposes shall be returned to the providing party within 14 days of a written request by the providing party for their return after mediation. Such reports shall not be discoverable or admissible at trial or any hearing. If the party procuring the report designates the expert to testify, such party shall have the right to prevent discovery or testimony by the expert regarding the mediation report and any opinions therein. The procuring party may use data such as measurements and photographs without waiving this privilege. Nothing herein shall prohibit the use of those reports and estimates in any subsequent insurance claims or lawsuits involving the same Insurance Company.

V.
APPRAISAL

Electronically Filed
6/16/2014 3:11:29 PM
Hidalgo County District Clerks
Reviewed By: Armando Cantu

Electronically Filed
6/11/2014 1:53:04 PM
Hidalgo County District Clerks
Reviewed By: Claudia Lemus

Any party wishing to invoke the appraisal process to determine the amount of the loss in dispute may do so by filing with the Court a declaration to that effect. However, the appraisal process will not commence until the end of the abatement period – 30 days following any party filing the Mediator's Statement (attached hereto as Exhibit D) declaring an unsuccessful mediation. . The procedure to be followed in the appraisal process will be determined by the language of the appraisal clause in effect at the time of the loss. If an umpire cannot be agreed upon as provided by the policy provisions, the Court will appoint an umpire. Dispositive motions may be filed and heard pursuant to the Texas Rules of Civil Procedure, subject to the deadline set forth in CMO No. 4.

VI.
MEDIATION

The parties are ordered to mediate within one hundred twenty (120) days following (1) the filing of the Notice of Transfer, (2) the entry date of CMO No. 1 (July 22, 2013) , or (3) the date the defendant insurance company's Original Answer is due, whichever is later. This deadline can be extended by agreement of the parties and without the necessity of obtaining court approval. Additionally, neither party waives the right to invoke appraisal following participation in mediation in accordance with this Order.

If the parties cannot agree on a mediator, the parties shall request appointment of a mediator by the Court.

The Insurance Company shall be permitted one inspection of the residence involved in the lawsuit (as soon as practicable) prior to mediation. If the mediation is unsuccessful, the Insurance Company and other Defendants may re-inspect the residence with the same, new or additional experts pursuant to the Texas Rules of Civil Procedure.

Electronically Filed
6/16/2014 3:11:29 PM
Hidalgo County District Clerks
Reviewed By: Armando Cantu

Electronically Filed
6/11/2014 1:53:04 PM
Hidalgo County District Clerks
Reviewed By: Claudia Lemus

Unless the parties agree otherwise, at least 10 days before mediation, the parties are to exchange a completed "Pre-Mediation Damages Documentation Affirmation" representing the existence and disclosure of documentation pertaining to the residence as identified in Section IV, Initial Disclosures, *supra*, including documentation from Plaintiff(s) reflecting any partially completed and/or completed repairs. As part of the mediation process, the "Pre-Mediation Damages Documentation Affirmation" shall not be admissible at trial for any purpose and it is afforded all privileges associated with mediation. Plaintiff's "Pre-Mediation Documentation Affirmation" is attached to this Order as Exhibit A. Defendant's "Pre-Mediation Documentation Affirmation" is attached to this Order as Exhibit B.

The parties may agree to mediate any case or group of cases at any time. The parties agree to mediate in good faith. Plaintiff(s) and a representative for the Defendant with authority to settle the case shall be physically present at the mediation, unless otherwise agreed by the parties.

The Court further orders the parties to provide a Mediator's Statement (attached hereto as Exhibit D) to the mediator. If any case does not settle on the date of the mediation proceeding, the mediator shall sign the Mediator's Statement and provide a copy to counsel for the parties. The date that any party (or the mediator) files the Mediator's Statement with the Court shall be deemed the date of "impasse". If negotiations are continuing beyond the date of the mediation proceeding, the parties may agree to delay filing the Mediator's Statement for a reasonable period of time.

VII.
DISCOVERY

Electronically Filed
6/16/2014 3:11:29 PM
Hidalgo County District Clerks
Reviewed By: Armando Cantu

Electronically Filed
6/11/2014 1:53:04 PM
Hidalgo County District Clerks
Reviewed By: Claudia Lemus

The Court adopted Master Discovery for the residential cases on September 10, 2013. The Master Discovery for the commercial discovery is still being finalized. Discovery issues are addressed in the First Amended Case Management Order No. 2.

VIII.
SCHEDULING ORDERS

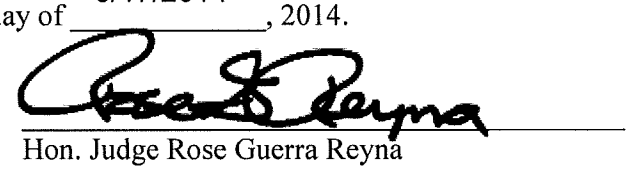
Within 30 days after the abatement period ends, the parties will enter into and submit to the Court an Agreed Scheduling Order in the form required by the Court.

IX.
STANDING HEARING DATE

The Court will hold a standing hearing date every other Tuesday at 1:30 p.m. to address any motion of any party filed no later than 5:30 p.m. on the Wednesday immediately preceding the standing hearing date.

Any party wishing to have a hearing set on the Court's standing hearing date, must provide the information contained in Exhibit C, attached to this Order, to the Court Coordinator via e-filing in the General MDL-0123 file no later than 5:30 p.m. on the Wednesday immediately preceding the standing hearing date.

SIGNED and ENTERED this the _____ day of 6/17/2014, 2014.



Hon. Judge Rose Guerra Reyna

AGREED AS TO FORM ONLY:

THE MOSTYN LAW FIRM

/s/ Amber Anderson Mostyn
Amber Anderson Mostyn
ALA_Teamefile@mostynlaw.com
State Bar No. 90001704

Electronically Filed
6/16/2014 3:11:29 PM
Hidalgo County District Clerks
Reviewed By: Armando Cantu

Electronically Filed
6/11/2014 1:53:04 PM
Hidalgo County District Clerks
Reviewed By: Claudia Lemus

3810 W. Alabama Street
Houston, Texas 77027
(713) 861-6616 (Office)
(713) 861-8084 (Facsimile)

LIAISON COUNSEL FOR THE PLAINTIFFS

THOMPSON, COE, COUSINS, & IRONS, L.L.P.

/s/ Jennifer Kearns
Jennifer Kearns
State Bar No. 24049865
One Riverway, Suite 1600
Houston, Texas 77056
Telephone: (713) 403-8210
Facsimile: (713) 403-8299

LIASION COUNSEL FOR THE DEFENDANTS